



Steven M. Hecht
Member of the Firm
Tel 973 597 2380
Fax 973 597 2381
shecht@lowenstein.com

July 5, 2011

Honorable Claire C. Cecchi
United States District Judge
United States District Court
Martin Luther King, Jr. Federal Building & U.S. Courthouse
50 Walnut Street, Room 2B
Newark, New Jersey 07102

Re: *David Anderson v. Pertti Törmälä, et al.*, No. 11-cv-00525

Dear Judge Cecchi:

Our firm represents the plaintiff in the above-referenced action and we understand that the case has now been re-assigned to Your Honor. In connection with the defendants' motion to dismiss, we hereby enclose for Your Honor's convenience a courtesy copy of the plaintiff's opposition papers and accompanying declarations, which we had previously supplied to Judge Sheridan.

In addition, we note that as to the reply papers submitted by the defendants, we believe that the Court should not review or otherwise give credit to the thirteen-page affidavit of Antti Jokela, a Finnish law professor that the defendants appear to have proffered as a legal expert on Finnish law. That witness was only first introduced on reply, and we believe that the new material raised in Professor Jokela's declaration should have been raised in the defendants' initial brief so that the plaintiff could have had adequate and due opportunity to respond. *See D'Alessandro v. Bugler Tobacco Co.*, No. 05-5051, 2007 U.S. Dist. LEXIS 2735, at *5 (D.N.J. Jan. 12, 2007) ("A moving party may not raise new issues and present new factual materials in a reply brief that it should have raised in its initial brief.") (citing *International Raw Materials, Ltd. v. Stauffer Chem. Co.*, 978 F.2d 1318, 1327 n. 11 (3d Cir. 1992) (refusing to consider an issue raised for the first time in a reply brief); *Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186, 204-05 n. 29 (3d Cir. 1990); *Ballas v. Tedesco*, 41 F. Supp.2d 531, 533 (D.N.J. 1999)). Thus, for example, only now for the first time on reply do the defendants urge that the entire action, including the fraud and other common law claims, should be governed by Finnish law. *See* Jokela Declaration at Section V. This is a completely new position relative to that in their moving brief (*see* Def. Mem. at 13).

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jtu".

Steven M. Hecht

Lowenstein Sandler PC In California, Lowenstein Sandler LLP

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Enclosures

cc: George O. Richardson, III, Esq. (w/o enclosures)
Carl D. Poplar, Esq. (w/o enclosures)